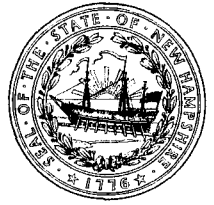




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

September 15, 2006

E. Tupper Kinder, Esq.  
Nelson Kinder Mosseau & Saturley  
99 Middle Street  
Manchester, NH 03101

Re: Docket No. AF 06-024 – Osram Sylvania Products, Inc.

Dear Attorney Kinder:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

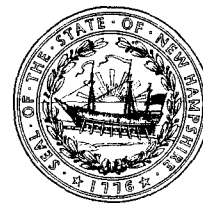
**COPY**

Michael P. Sclafani,  
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner  
Anthony P. Giunta, P.G., Director, DES Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
Paul L. Heirtzler, DES WMD  
Linda Birmingham, DES WMD  
Jennifer J. Patterson, NH DOJ  
DES Public Information Officer  
Chip Darby, Osram Sylvania



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

OSRAM SYLVANIA Products, Inc.  
100 Endicott Street  
Danvers, MA 01923

RE: OSRAM SYLVANIA Products, Inc.  
Exeter, New Hampshire  
EPA ID No. NHD003941655

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 06-024**

**I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and OSRAM SYLVANIA Products, Inc., pursuant to RSA 147-A and the New Hampshire Administrative Rule Env-C 601. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

**II. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. OSRAM SYLVANIA Products, Inc. ("OSRAM") is a corporation registered to do business in New Hampshire. OSRAM's headquarters are located at 100 Endicott Street, Danvers, Massachusetts. OSRAM's Exeter, New Hampshire facility has a mailing address of 131 Portsmouth Avenue, Exeter, NH 03833.

**III. BACKGROUND**

1. Pursuant to RSA 147-A, the Department of Environmental Services regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.

3. OSRAM is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on February 26, 1993. EPA Identification Number NHD003941655 was assigned to OSRAM's site located at 131 Portsmouth Avenue, Exeter, New Hampshire.

4. On December 21, 2005, DES personnel inspected OSRAM for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency No. WMD 06-003 ("LOD") to OSRAM on February 21, 2006. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violation.

#### **IV. ALLEGATIONS, ADMINISTRATIVE FINES**

1. OSRAM failed to maintain an inspection log for the elementary neutralization unit that documented the time of the inspection, observations made, and the date and nature of the repairs or remedial actions, as required by Env-Wm 353.04(g)(7), ("Violation 1"). Due to the fact that OSRAM was conducting inspections of the elementary neutralization unit, DES is not seeking a fine for this violation.

2. OSRAM failed to conduct adequate hazardous waste determinations for two (2) waste streams (*i.e.*, waste "lab pack" material stored in the office area and two (2) 55-gallon stainless steel containers of waste nitric acid stored in the acid room), as required by Env-Wm 502.01 ("Violation 2"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination, for a potential fine of \$3,000.

3. OSRAM failed to close one (1) 55-gallon satellite container of hazardous waste sodium hydroxide stored in the 100-gallon corrosive tank room, as required by Env-Wm 507.01(a)(3) and Env-Wm 509.03(d) ("Violation 3"). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area.

4. OSRAM failed to document inspections of the hazardous waste storage area for a total of twenty-one (21) weeks over a 1-year time period, as required by Env-Wm 509.02(a)(1) ("Violation 4"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area per week. For settlement purposes only, DES is seeking a fine for the time period of seventeen (17) weeks prior to the date of the inspection. OSRAM failed to document inspections for eight (8) of the seventeen (17) weeks immediately prior to the inspection, for a potential fine of \$8,000. OSRAM subsequently documented that no waste was stored in the hazardous waste storage area for seven (7) of the eight (8) weeks, for a revised potential fine of \$1,000.

5. OSRAM failed to maintain a personnel training program and provide hazardous waste training for the following employees who signed hazardous waste manifests, as required by Env-Wm 509.02(a)(2): two (2) years of annual training for Gary Ewing; one (1) initial training for Joseph Wing; and two (2) years of annual training for Stephen Lamattina ("Violation 5"). Env-C

612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training and \$1,000 per individual not trained for annual updates, for a potential fine of \$5,750.

6. OSRAM failed to have, within 100 feet of the Main Hazardous Waste Storage Area, portable fire equipment, spill control equipment, and an alarm or other form of internal/external communication system capable of providing immediate contact with facility personnel and local authorities (e.g., fire department), as required by Env-Wm 509.02(a)(4) ("Violation 6"). Env-C 612.07(d) authorizes a fine of \$1,250 per requirement not met per storage area, for a potential fine of \$3,750.

7. OSRAM failed to maintain a complete contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 7"). Env-C 612.07(e) authorizes a fine of \$2,000.

8. OSRAM failed to store hazardous waste in one (1) 12,000 gallon tank that meets the specifications of 40 CFR 265 Subpart J—Tank Systems and comply with applicable tank standards, as required by Env-Wm 509.02(a)(7) ("Violation 8"). Env-C 612.07(g) authorizes a fine of \$2,000 per tank.

9. OSRAM failed to post adequate emergency information at the nearest telephone to the hazardous waste storage area, as required by Env-Wm 509.02(b) ("Violation 9"). Env-C 612.07(h) authorizes a fine of \$1,000 per area.

10. OSRAM failed to label one (1) 55-gallon container of used oil destined for recycling in the Vacuum Annealing area with the words "Used Oil for Recycle," as required by Env-Wm 807.06(b)(4) ("Violation 10"). Env-C 612.10 (a)(1), which references Env-Wm 807.06(b)(2), modified in August 2000 to Env-Wm 807.06(b)(4), authorizes a fine of \$100 for each container that is 55-gallons or greater.

11. OSRAM failed to ensure that two (2) 55-gallon containers of used oil, one stored in the Vacuum Annealing area and one in the Boiler Room, were closed at all times, unless oil is being added to or removed from the container, as required by Env-Wm 807.06(b)(5) ("Violation 11"). Env-C 612.10(b)(1), which references Env-Wm 807.06(b)(3), modified in August 2000 to Env-Wm 807.06(b)(5), authorizes a fine of \$200 for each container that is 55-gallons or greater, for a potential fine of \$400.

12. OSRAM failed to conduct an adequate used oil determination for used oil as required by Env-Wm 807.06(b)(7) ("Violation 12"). Env-C 612.10(c) which references Env-Wm 807.06(b)(4), modified in August 2000 to Env-Wm 807.06(b)(7), authorizes a fine of \$750 per determination not made.

**V. PAYMENT, WAIVER OF HEARING**

1. DES agrees to waive fines associated with Violations 1 through 5, and 7 through 12 because they are not Class I violations.

2. For purposes of settlement, the Division agrees to the following:

- a. Violation 6 is a Class I violation. DES has determined due to OSRAM's high level of cooperation in providing information, its effort to correct the violation, its good faith efforts to comply and other circumstances, that a 50% reduction should be applied. (i.e., (25%) cooperation, (20%) good faith effort to comply, (5%) other circumstances.) DES is thus seeking a fine of \$1,875.

3. OSRAM agrees to pay \$1,875 upon execution of this Agreement by an authorized representative of OSRAM.

4. Payment under Section V. Paragraph 3 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit  
Attn: Michael Sclafani, Legal Assistant  
PO Box 95  
Concord, NH 03302-0095

5. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

6. By executing this Agreement, OSRAM waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

7. The effective date of this Agreement will be the date on which it is signed by an authorized representative of OSRAM, and the Director of the Waste Management Division, and the Commissioner of DES.

8. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.


9. The parties have entered into this Agreement to avoid the time and cost of litigation. This Agreement shall not constitute, be construed as, or operate as: (i) an admission of liability by OSRAM; (ii) an admission by OSRAM or evidence that it violated any law, rule, regulation,

policy or regulatory interpretation; or (iii) a waiver of any defense OSRAM might raise in any third party proceeding.

10. The preceding paragraph shall not bar DES from using the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of OSRAM and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding to enforce this Agreement.

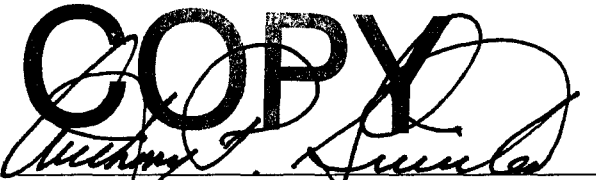
WHEREFORE, the parties voluntarily accept the terms of this Agreement.

**OSRAM SYLVANIA Products, Inc.**

**COPY**  
  
By: Steven Huppert, Plant Manager  
Duly Authorized

August 22, 2006  
Date

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

**COPY**  
  
Anthony F. Giunta, P.G., Director  
Waste Management Division

9/12/06  
Date

**COPY**  
  
Michael J. Nolin, Commissioner

09 14 06  
Date

cc: RCRA/DB/AF  
Paul L. Heirtzler, P.E., Esq., Administrator, WMD  
Gretchen Hamel, Administrator, DES Legal Unit  
Public Information Officer, DES PIP Office  
Jennifer Patterson, NH DOJ  
Chip Darby, Safety and Environmental Specialist, OSRAM SYLVANIA Products, Inc., 131  
Portsmouth Avenue, Exeter, NH 03833